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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,050	10/12/2001	David Ellis	S85.12-0001	1800
27367 7590 12/19/2006 WESTMAN CHAMPLIN & KELLY, P.A. SUITE 1400 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402-3319			EXAMINER TARAE, CATHERINE MICHELLE	
			ART UNIT	PAPER NUMBER
			3623	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/19/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/977,050

Applicant(s)

ELLIS ET AL.

Examiner

C. Michelle Tarae

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on September 21, 2006 and December 5, 2006 have been entered.

Claims 1-2, 6, 8-9, 13-15, 17-18 have been amended. Claims 1-18 are now pending in this application.

Response to Amendment

2. Applicant's amendments to claims 1-2, 6, 8-9, 13-15, 17-18 are acknowledged.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claims 1-5, 8-18 are rejected under 35 U.S.C. 102(a,e) as being anticipated by Shannon (U.S. 6,088,678).

As per claim 1, Shannon discloses risk management software embodied upon a computer-readable medium, the software comprising a set of instructions for the following steps to be performed when the software is executed:

- a) accessing project data comprising of a plurality of action identifiers, each of which identifies a separate action to be performed (col. 2, lines 11-20; col. 3, lines 46-52; Table 1 in col. 5-6; Each action, or substep or task, to be performed as part of a project is identified in a matrix.);
- b) analyzing the project data to identify a plurality of activities linked to at least one of the actions, wherein to at least some of the plurality of activities is assigned at least one risk indicator, the at least one risk indicator identifying an impact of a risk on the activity (col. 3, line 60-col. 4, line 2; col. 4, lines 35-38 and 56-61; col. 6, lines 27-33 and 59-65; Activity data associated with each action/substep/task of the project is identified and also placed in the matrix and assigned a risk indicator.);
- c) on the basis of one or more mitigating tasks identified to reduce or prevent the risk or the consequences of the risk, outputting to the project data one or more new action identifiers or alterations to existing action identifiers in the project data (col. 6, lines 27-65; The user can make changes to the project tasks to see the affects of the changes of the tasks on the overall project including seeing an increase and decrease of risk.); and

d) accessing changes to the project data and revising the plurality of activities in dependence on whether the changes are to action identifiers in the project data resulting from step c) above (col. 6, line 27-col. 7, line 2; The user can make changes to the project tasks to see the affects of the changes of the tasks on the overall project including seeing an increase and decrease of risk.).

As per claim 2, Shannon discloses risk management software as claimed in claim 1, wherein the changes to the project data are compared with new action identifiers or alterations to existing action identifiers previously output to the project data and where the changes to project data relate to action identifiers previously output to the project data no revisions are made to the plurality of activities (col. 6, line 27-col. 7, line 2; The user can make changes to the project tasks to see the affects of the changes of the tasks on the overall project including seeing an increase and decrease of risk. The user can also halt the project and modify project tasks to see the affects on the remainder of the tasks for the project, thereby not making any project revisions to the project before the halt.).

As per claim 3, Shannon discloses risk management software as claimed in claim 1, comprising the step of receiving a trigger from the project data when the project data has been changed (col. 4, lines 5-18; The simulation tool stops at an event that it has identified as not able to be completed and remains stopped until it detects a change to the project that will allow the event to occur.).

As per claim 4, Shannon discloses risk management software as claimed in claim 1, comprising the step of periodically polling the project data to determine whether

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changes have been made to the project data (col. 4, lines 5-18; When the simulation tool runs, it polls the project data and makes determinations on whether changes have been made to the project data.).

As per claim 5, Shannon does not expressly disclose risk management software as claimed in claim 1, comprising the further step of automatically outputting a message to one or more predetermined recipients (col. 6, lines 22-32; An audit trail is generated at the end of each simulation to report the outcome and risk assessment of each variable of each substep of the project, where the outcome includes risk, cost and schedule data. Thus, the audit trail report may be construed as a message to the user of the simulation tool.).

As per claim 8, Shannon discloses risk management software as claimed in claim 1, wherein the risk indicator comprises one or more of a cost allowance and a time allowance (col. 5, lines 28-31; col. 6, lines 27-29 and 59-62).

Claims 9-18 recite substantially similar subject matter to claims 1-5 and 8 above. Therefore, claims 9-18 are rejected on the same basis as claims 1-5 and 8 above.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shannon (U.S. 6,088,678).

As per claim 6, Shannon discloses risk management software as claimed in claim 5, comprising the further step of automatically outputting a message to one or more predetermined recipients when the consequences of a risk are identified as discussed above in claim 5 (col. 6, lines 22-32). However, Shannon does not expressly disclose outputting the message when the consequences of a risk exceed a selected threshold. However, it is old and well known in risk management to set risk thresholds in order to quantifiably assess the levels/impact of risk on an event, thereby enabling a manager to take action as soon as a risk has reached a certain level or impact on an event. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Shannon to have its audit reports be generated when the consequences of a risk have exceeded a selected threshold as doing so would provide managers with immediate information as to the status of risk on a project, thereby enabling the managers to take action so as to mitigate the risk in a timely fashion.

As per claim 7, Shannon discloses risk management software as claimed in claim 5, wherein the message is automatically output when the processor receives

notice of an impacted risk (col. 6, lines 22-32; An audit trail is generated at the end of each simulation to report the outcome and risk assessment of each variable of each substep of the project, where the outcome includes risk, cost and schedule data. Thus, the audit trail report may be construed as a message to the user of the simulation tool notifying the user of an impacted risk.).

Response to Arguments

7. Applicant's arguments are moot in view of the new grounds of rejections provided above.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Barnard et al. (U.S. 5,586,252) discusses a system for failure mode analysis;
- Bowman-Amuah (U.S. 6,370,573) discusses risk assessment in a development architecture framework.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Tarae whose telephone number is 571-272-6727. The examiner can normally be reached Monday – Friday from 8:30am to 5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 571-272-6729.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



C. Michelle Tarae
Patent Examiner
Art Unit 3623

November 30, 2006